

BEFORE THE MERIT EMPLOYEE RELATIONS BOARD
OF THE STATE OF DELAWARE

AISHA WEAVER,)	
)	
Employee/Grievant,)	
)	DOCKET No. 14-10-611
v.)	
)	DECISION AND
DEPARTMENT OF HEALTH AND SOCIAL SERVICES,)	ORDER OF DISMISSAL
GOVERNOR BACON HEALTH CENTER,)	
)	
Employer/Respondent.)	

After due notice of time and place, this matter came to a hearing before the Merit Employee Relations Board (the Board) at 9:00 a.m. on March 19, 2015 at the Delaware Public Service Commission Hearing Room, Cannon Building, 861 Silver Lake Boulevard, Suite 100, Dover, DE 19904.

BEFORE Martha K. Austin, Chair, John F. Schmutz, Paul R. Houck, and Victoria D. Cairns, a quorum of the Board pursuant to 29 *Del. C.* §5908(a).

APPEARANCES

Rae Mims
Deputy Attorney General
Legal Counsel to the Board

Deborah L. Murray-Sheppard
Board Administrator

Kevin R. Slattery
Deputy Attorney General
on behalf of the Department of Health and Social
Services, Governor Bacon Health Center

BRIEF SUMMARY OF THE EVIDENCE

The Board did not hear any witness testimony but heard legal argument by the Department of Health and Social Services (DHSS) on its motion to dismiss this appeal for lack of jurisdiction. The employee/grievant, Aisha Weaver, did not file any opposition to the motion to dismiss and did not appear for the hearing.

FINDINGS OF FACT

Weaver was employed by DHSS at the Governor Bacon Health Center (GBHC) as a Food Service Worker when she received a one-day suspension for being “no-call/no-show” on June 20, 21, and 22, 2014. Weaver’s position is represented for purposes of collective bargaining by AFSCME Local 516. There is an existing agreement between DHSS and AFSCME Local 516 which includes a grievance procedure applicable to disciplinary issues.

CONCLUSIONS OF LAW

Merit Rule 1.3 states:

If a subject is covered in whole or in part by a collective bargaining agreement, 29 Del. C. §5938(d) provides that the Merit Rules shall not apply to such subject matters. . . . Collective bargaining agreements may govern matters of bargaining unit-specific pay and benefits . . . discipline up to and including dismissal, grievances, work schedules and working conditions.

Merit Rule 18.3 states:

An employee who is in a bargaining unit covered by a collective bargaining agreement shall process any grievance through the grievance procedure outlined in the collective bargaining agreement. However, if the subject of the grievance

is nonnegotiable pursuant to 29 Delaware Code §5938, it shall be processed according to this Chapter.

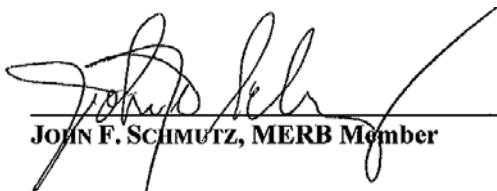
The Board concludes as a matter of law that it does not have jurisdiction to hear Weaver's appeal because her one-day suspension was a subject covered in whole or in part by the Collective Bargaining Agreement. Weaver can grieve her suspension only through the grievance procedure outlined in the Collective Bargaining Agreement.

DECISION AND ORDER

It is this 24th day of March 2015, by a unanimous vote of 4-0, the Decision and Order of the Board to dismiss Weaver's appeal for lack of jurisdiction.


MARTHA K. AUSTIN, MERB Chairwoman


VICTORIA D. CAIRNS, MERB Member


JOHN F. SCHMUTZ, MERB Member


PAUL R. HOUCK, MERB Member

APPEAL RIGHTS

29 *Del. C.* §5949 provides that the grievant shall have a right of appeal to the Superior Court on the question of whether the appointing agency acted in accordance with law. The burden of proof on any such appeal to the Superior Court is on the grievant. All appeals to the Superior Court must be filed within thirty (30) days of the employee being notified of the final action of the Board.

29 *Del. C.* §10142 provides:

- (a) Any party against whom a case decision has been decided may appeal such decision to the Court.
- (b) The appeal shall be filed within 30 days of the day the notice of the decision was mailed.
- (c) The appeal shall be on the record without a trial de novo. If the Court determines that the record is insufficient for its review, it shall remand the case to the agency for further proceedings on the record.
- (d) The court, when factual determinations are at issue, shall take due account of the experience and specialized competence of the agency and of the purposes of the basic law under which the agency has acted. The Court's review, in the absence of actual fraud, shall be limited to a determination of whether the agency's decision was supported by substantial evidence on the record before the agency.

Mailing date: **March 24, 2015**

Distribution:

Original: File

Copies: Grievant

Agency's Representative

Board Counsel

MERB Website